

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN MORALEZ,

Plaintiff,

v.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, et al.,

Defendants.

Case No. 1:18-cv-634

HON. JANET T. NEFF

OPINION AND ORDER

On June 6, 2018, Plaintiff, proceeding pro se, initiated this action with the filing of a Motion for Mandamus Relief (ECF No. 1). Defendants filed a motion to dismiss on December 14, 2018 (ECF No. 19). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending this Court deny Plaintiff's Motion for Mandamus Relief, grant Defendants' Motion to Dismiss, and terminate this action. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), this Court is required to perform de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

In his objections, Plaintiff argues that Defendants' "defective service violations," i.e., their failure to neither "properly nor timely serve a pro se plaintiff with the Defendant's December 14, 2018 court filing," "automatically and legally mandate that all of the Defendant's December 14, 2018 Court Filings must be immediately dismissed by this Court" (Pl. Obj., ECF No. 35 at

PageID.232-239). According to Plaintiff, this Court lacks subject matter jurisdiction to decide the “unserved” court filings (*id.*).

Plaintiff’s argument is not supported by the record. The record indicates that on December 14, 2018, Defendants mailed Plaintiff copies of their motion to dismiss and supporting memoranda “postage prepaid via U.S. Mail” to his address of record (Certificates of Service, ECF Nos. 21 & 23). Indeed, Plaintiff timely filed a response to Defendants’ motion on December 28, 2018 (ECF No. 24). Plaintiff’s jurisdictional argument provides no basis for rejecting the Magistrate Judge’s Report and Recommendation in this case.

Plaintiff also argues that the Magistrate Judge erred in determining that he was not entitled to his requested mandamus relief (Pl. Obj., ECF No. 35 at PageID.240-254; R&R, ECF No. 34 at PageID.230). According to Plaintiff, he satisfies all three prongs of the test for mandamus relief, and this Court is therefore “legally mandated” to grant him the relief (*id.*). Plaintiff’s objection fails to demonstrate any factual or legal error in the Magistrate Judge’s analysis or conclusion. Indeed, Plaintiff’s “objection” to the Report and Recommendation merely reiterates the citations to authority and arguments Plaintiff originally presented in his motion (ECF No. 1).

Accordingly, this Court will deny the objections and adopt the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. Because this Opinion and Order resolves all pending claims in this case, a Judgment will also be entered. *See* FED. R. CIV. P. 58. Further, because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 35) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 34) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion for Mandamus Relief (ECF No. 1) is DENIED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss (ECF No. 19) is GRANTED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: March 26, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge